

DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

BLOCH & GUGGENHEIMER, INC.
Respondent

Case No.: I-00-10439

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701, *et seq.*) and Title 20, Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-10439) served October 11, 2000, the Government charged Respondent Bloch & Guggenheimer, Inc./B&G Foods, Inc.¹ with a violation of 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes

¹ The Notice of Infraction lists only Bloch and Guggenheimer, Inc. as the Respondent. In responding to the Notice of Infraction, however, Respondent has used business stationery listing “B&G Foods, Inc.” While the precise nature of the relationship between Bloch & Guggenheimer, Inc. and B&G Foods, Inc. is unclear from the record, this administrative court concludes that B&G Foods, Inc. has, without objection on the part of Bloch and Guggenheimer, Inc., held itself out to have either the actual or apparent authority to bind Bloch and Guggenheimer, Inc. for purposes of this adjudication. *See Insurance Management, Inc. v. Eno & Howard Plumbing Corp.*, 348 A.2d 310, 312 (D.C. 1975); *Department of Health v. JV Trucking, Inc.*, OAH Final Order, I-00-10445/10467 at n.2.

while parked, stopped or standing. The Notice of Infraction alleges that a truck owned and operated by Respondent violated 20 DCMR 900.1 in the 1200 block of 4th Street, N.E. on October 2, 2000, and seeks a fine amount of \$500.00. See 16 DCMR 3224.3(aaa), as added by the Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999, D.C. Law 13-35 (Effective October 7, 1999); 46 D.C. Reg. 8699 (October 29, 1999); 46 D.C. Reg. 6017 (July 23, 1999).

On October 31, 2000, this administrative court received a letter from Respondent dated October 24, 2000. In the letter, Respondent asserted that it had not been aware of the proscriptions of 20 DCMR 900.1 and that, essentially, the Government has not done enough to make the public aware of this regulation. Respondents also assert that the fine amount sought by the Government for the alleged violation of 20 DCMR 900.1 is “unjustified.” This administrative court construes *pro se* Respondent’s October 24 letter as a timely plea of Admit with Explanation, along with a request for a suspension or reduction of the fine amount.

On October 31, 2000, this administrative court issued an order permitting the Government to respond to Respondent’s plea and request within ten (10) calendar days from the order’s service date.² Because the Government has not responded within the allotted time period, the matter is now ripe for adjudication.

² The October 31 order was duly served on November 1, 2000.

II. Summary of Evidence

Respondent admits that its truck idled its engine for more than three minutes as charged in the Notice of Infraction. Respondent explains that it was not aware of the proscriptions of 20 DCMR 900.1 and asserts that, in essence, the Government has not done enough to make the public aware of this regulation.

III. Findings of Fact

1. By its plea of Admit with Explanation to the Notice of Infraction, Respondent has admitted that it committed a violation of 20 DCMR 900.1 on October 2, 2000.
2. On October 2, 2000 a truck owned and operated by Respondent idled its engine while parked for more than three (3) minutes in the 1200 block of 4th Street, N.E.

IV. Conclusions of Law

1. Respondent violated 20 DCMR 900.1 on October 2, 2000.
2. Respondent's explanation that it was unaware of the proscriptions of 20 DCMR 900.1 is unavailing. As an entity doing business in the District of Columbia, Respondent is expected to be on notice of applicable District of Columbia laws,

and is required to be in compliance with those laws – particularly those such as 20 DCMR 900.1 that have been in effect for years.³ *Accord Department of Health v. Good's Transfer, Inc.*, OAH Final Order, I-00-10436 at 3-4; *see also Shevlin-Carpenter Co. v. State of Minnesota*, 218 U.S. 57, 68 (1910) (ignorance of law is no excuse, particularly where “[t]here is no element of deception or surprise in the law.”).

3. Respondent also asserts that the Government has not done enough to make the public aware of the proscriptions of 20 DCMR 900.1. In the District of Columbia, the Government’s public notice obligation in this regard is to publish the law or regulation in the D.C. Register in keeping with applicable comment and review periods. *See* District of Columbia Office of Documents Act of 1978, effective March 6, 1979 (D.C. Law 2-153; D.C. Code, § 1-1533); District of Columbia Administrative Procedures Act, approved October 21, 1968 (Public Law No. 90-614, 82 Stat. 1204; D.C. Code §§ 1-1501 *et seq.*). The text of 20 DCMR 900.1 and all recent amendments appear to have been published in the D.C. Register in accordance with those requirements. *See* 32 D.C. Reg. 565, 647 (February 1, 1985); 46 D.C. Reg. 6017 (July 23, 1999); 46 D.C. Reg. 8699 (October 29, 1999).
4. While the D.C. Council has at times required additional notice for regulations that impact upon broad segments of the general public, it does not generally do so for

³ *See generally* 20 DCMR 900.1 (notes on history of regulatory authorities and sources). Moreover, at the time of the infraction it had been a year since the penalties for violating 20 DCMR 900.1 were amended. *See* Motor Vehicle Excessive Fine Amendment Act of 1999, D.C. Law 13-35, 46 D.C. Reg. 8699 (October 29, 1999).

sophisticated commercial interests in a regulated industry. The policy question of whether some better form of public notice for 20 DCMR 900.1 should be utilized is not for this administrative court to decide.

5. Although Respondent criticizes the alleged lack of notice regarding the proscriptions of 20 DCMR 900.1, it has nevertheless acknowledged responsibility for its unlawful conduct. Moreover, there is no evidence in the record of a history of Respondent's non-compliance. Accordingly, the fine of \$500.00 sought by the Government will be reduced to \$325.00. See D.C. Code §§ 6-2703(b)(3) and (b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

Therefore, upon Respondent's answer and plea, its application for reduction or suspension of the fine and penalties, and the entire record in this case, it is hereby this _____ day of _____, 2001:

ORDERED, that Respondent shall cause to be remitted a single payment totaling **THREE HUNDRED TWENTY-FIVE DOLLARS (\$325.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's license or permits pursuant to D.C. Code § 6-2713(f).

/s/ **4-18-01**

Mark D. Poindexter
Administrative Judge